

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SOLAE, L.L.C.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 4:03CV01595RWS
)	
ARCHER DANIELS MIDLAND)	JURY TRIAL DEMANDED
COMPANY)	
)	
and)	
)	
AMERIFIT NUTRITION, INC.)	
)	
Defendants.)	

**DEFENDANT, AMERIFIT NUTRITION, INC.'S, ANSWER AND
COUNTER CLAIMS TO PLAINTIFF'S SECOND SUPPLEMENTAL COMPLAINT**

Defendant, AMERIFIT NUTRITION, INC. ("Amerifit"), by and through its attorneys, hereby answers the claims of the Plaintiff, SOLAE, L.L.C., ("Solae"), presented in Plaintiff's Second Supplemental Complaint for Patent Infringement and Jury Demand ("Complaint"), as follows:

1. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph one, concerning the legal basis for this Complaint, and therefore denies same and leaves Plaintiff to its proof thereof.
2. Amerifit admits that it is subject to personal jurisdiction in this district. Amerifit denies that it has committed infringing acts in this district.
3. Amerifit admits that this Court has exclusive jurisdiction over the subject matter of this action.
4. Amerifit admits that venue is proper in this Court.

5. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph five, concerning the place of incorporation of Solae and the business address for Solae set forth therein, and therefore denies same and leaves Plaintiff to its proof thereof.

6. Amerifit admits the allegations contained in paragraph six of the Complaint.

7. Amerifit admits the allegations contained in paragraph seven of the Complaint.

8. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph eight and therefore denies same and leaves Plaintiff to its proof thereof.

9. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph nine and therefore denies same and leaves Plaintiff to its proof thereof.

10. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph ten and therefore denies same and leaves Plaintiff to its proof thereof.

11. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph eleven and therefore denies same and leaves Plaintiff to its proof thereof.

12. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph twelve and therefore denies same and leaves Plaintiff to its proof thereof.

13. Amerifit states that the document speaks for itself.

14. Amerifit denies the allegations contained in paragraph fourteen of the Complaint.

15. Amerifit denies the allegations contained in paragraph fifteen of the Complaint.

16. To the extent paragraph sixteen of the Complaint alleges that ADM's Novasoy contains more than trace amounts of each of the soy isoflavones daidzein, genistein, and

glycitein, their glucosides, and acetyl and malonyol esters, Amerifit denies the allegations contained in paragraph sixteen of the Complaint.

17. Amerifit admits the allegations contained in paragraph seventeen of the Complaint.

18. Amerifit denies the allegations contained in paragraph eighteen of the Complaint.

19. Amerifit denies the allegations contained in paragraph nineteen of the Complaint.

20. To the extent paragraph twenty of the Complaint alleges that Amerifit's Estroven contains more than trace amounts of each of the soy isoflavones daidzein, genistein, and glycitein, their glucosides, and acetyl and malonyol esters, Amerifit denies the allegations contained in paragraph twenty of the Complaint.

21. Amerifit admits the allegations contained in paragraph twenty-one of the Complaint.

22. Amerifit states that the document speaks for itself.

23. Amerifit denies the allegations contained in paragraph twenty-three of the Complaint.

24. Amerifit denies the allegations contained in paragraph twenty-four of the Complaint.

25. Amerifit denies the allegations contained in paragraph twenty-five of the Complaint.

26. Amerifit states that the document speaks for itself.

27. Amerifit denies the allegations contained in paragraph twenty-seven of the Complaint.

28. Amerifit denies the allegations contained in paragraph twenty-eight of the Complaint.

29. Amerifit denies the allegations contained in paragraph twenty-nine of the Complaint.

30. Amerifit repeats the answers set forth above in paragraphs 1-29.

31. Amerifit denies the allegations contained in paragraph thirty-one of the Complaint.

32. Amerifit denies the allegations contained in paragraph thirty-two of the Complaint.

33. Amerifit denies the allegations contained in paragraph thirty-three of the Complaint.

34. Amerifit denies the allegations contained in paragraph thirty-four of the Complaint.

35. Amerifit denies the allegations contained in paragraph thirty-five of the Complaint.

36. Amerifit denies the allegations contained in paragraph thirty-six of the Complaint.

37. Amerifit denies the allegations contained in paragraph thirty-seven of the Complaint.

38. Amerifit denies the allegations contained in paragraph thirty-eight of the Complaint.

39. Amerifit denies the allegations contained in paragraph thirty-nine of the Complaint.

40. Amerifit denies the allegations contained in paragraph forty of the Complaint.

41. Amerifit denies the allegations contained in paragraph forty-one of the Complaint.

42. Amerifit denies the allegations contained in paragraph forty-two of the Complaint.

WHEREFORE, Amerifit prays that this Court enter judgment in its favor against Plaintiff and deny in the entirety the relief requested by Solae.

Affirmative Defenses

Invalidity

43. Each claim of the '212 patent is invalid under 35 U.S.C. § 102 as lacking novelty; is invalid under 35 U.S.C. § 103 because the differences between the subject matter claimed and the prior art are such that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains; and/or is invalid for failure to comply with the requirements of 35 U.S.C. § 112.

44. Each claim of the '382 patent is invalid under 35 U.S.C. § 102 as lacking novelty; is invalid under 35 U.S.C. § 103 because the differences between the subject matter claimed and the prior art are such that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains; and/or is invalid for failure to comply with the requirements of 35 U.S.C. § 112.

45. Each claim of the '381 patent is invalid under 35 U.S.C. § 102 as lacking novelty; is invalid under 35 U.S.C. § 103 because the differences between the subject matter claimed and the prior art are such that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains; and/or is invalid for failure to comply with the requirements of 35 U.S.C. § 112.

Non-Infringement

46. Amerifit does not now infringe, nor has it ever infringed, the '212 patent.

47. Amerifit does not now infringe, nor has it ever infringed, the '382 patent.

48. Amerifit does not now infringe, nor has it ever infringed, the '381 patent.

Counter-Claim
Declaratory Judgment

49. On information and belief, Plaintiff and counterclaim Defendant, Solae, L.L.C., is a Delaware limited liability corporation, having a principal place of business in St. Louis, Missouri.

50. Defendant and counterclaim Plaintiff, Amerifit Nutrition, Inc., is a corporation organized under the laws of the state of Delaware with its principal place of business at 166 Highland Park Drive, Bloomfield, Connecticut 06002.

51. This is an action for declaratory judgment of invalidity, unenforceability and non-infringement of U.S. Patent No. 6,642,212 ("the '212 patent"); U.S. Patent No. 6,664,382 ("the '382 patent"); and U.S. Patent No. 6,680,381 ("the '381 patent") under the patent laws of the United States, Title 35 United States Code.

52. Exclusive jurisdiction over these counterclaims is conferred upon this Court pursuant to 28 U.S.C. § 1338(a). The relief of declaratory judgment is proper under 28 U.S.C. § 2201.

53. A true and actual controversy exists regarding the validity, enforceability, and non-infringement of the claims of the '212 patent, the '382 patent and the '381 patent asserted by Solae against Amerifit.

54. On November 4, 2003, Plaintiff filed a Complaint (Civil Action Number 03 CV 01595 RWS) against Amerifit alleging, *inter alia*, that certain products made, used and/or sold by Amerifit infringe the '212 patent, the '382 patent and/or the '381 patent.

55. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c).

COUNT I - Invalidity of the '212 patent

56. Amerifit realleges the allegations set forth above in counterclaim paragraphs 49-55.

57. Each claim of the '212 patent is invalid under 35 U.S.C. § 102 as lacking novelty; is invalid under 35 U.S.C. § 103 because the differences between the subject matter claimed and the prior art are such that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains; and/or is invalid for failure to comply with the requirements of 35 U.S.C. § 112.

COUNT II - Invalidity of the '382 patent

58. Amerifit realleges the allegations set forth above in counterclaim paragraphs 49-55 and 57.

59. Each claim of the '382 patent is invalid under 35 U.S.C. § 102 as lacking novelty; is invalid under 35 U.S.C. § 103 because the differences between the subject matter claimed and the prior art are such that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains; and/or is invalid for failure to comply with the requirements of 35 U.S.C. § 112.

COUNT III - Invalidity of the '381 patent

60. Amerifit realleges the allegations set forth above in counterclaim paragraphs 49-55, 57 and 59.

61. Each claim of the '381 patent is invalid under 35 U.S.C. § 102 as lacking novelty; is invalid under 35 U.S.C. § 103 because the differences between the subject matter claimed and the prior art are such that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains; and/or is invalid for failure to comply with the requirements of 35 U.S.C. § 112.

COUNT IV - Non-Infringement of the '212 patent

62. Amerifit realleges the allegations set forth above in counterclaim paragraphs 49-55, 57, 59 and 61.

63. Amerifit does not now infringe, nor has it ever infringed, the '212 patent.

COUNT V - Non-Infringement of the '382 patent

64. Amerifit realleges the allegations set forth above in counterclaim paragraphs 49-55, 57, 59, 61 and 63.

65. Amerifit does not now infringe, nor has it ever infringed, the '382 patent.

COUNT IV - Non-Infringement of the '381 patent

66. Amerifit realleges the allegations set forth above in counterclaim paragraphs 49-55, 57, 59, 61, 63 and 65.

67. Amerifit does not now infringe, nor has it ever infringed, the '381 patent.

Prayer for Relief

WHEREFORE, counterclaim Plaintiff Amerifit requests that this Court:

A. Enter judgment declaring that U.S. Patent No. 6,642,212 is invalid and unenforceable.

B. Enter judgment declaring that U.S. Patent No. 6,664,382 is invalid and unenforceable.

C. Enter judgment declaring that U.S. Patent No. 6,680,381 is invalid and unenforceable.

D. Enter judgment declaring that Amerifit does not infringe, nor has it ever infringed, U.S. Patent No. 6,642,212.

E. Enter judgment declaring that Amerifit does not infringe, nor has it ever infringed, U.S. Patent No. 6,664,382.

F. Enter judgment declaring that Amerifit does not infringe, nor has it ever infringed, U.S. Patent No. 6,680,381.

G. Enter judgment pursuant to 35 U.S.C. § 285 awarding Amerifit all of its reasonable attorney fees, costs and expenses incurred in defending this action because this is an exceptional case.

H. Award such other and further relief as may be just and proper under the circumstances.

Demand for Jury Trial

Amerifit demands a trial by jury of all issues so triable as a matter of right.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

/s/ Kirill Y. Abramov

Stephen H. Rovak, #4218
Michael T. Marrah, #49916
Kirill Y. Abramov, #109139
One Metropolitan Square, Suite 3000
St. Louis, MO 63102
314.241.1800 Telephone
314.259.5959 Facsimile

and

David K.S. Cornwell
Timothy J. Shea, Jr.
Donald R. Banowit
Sterne, Kessler, Goldstein & Fox P.L.L.C.
1100 New York Avenue, N.W.
Washington, D.C. 20005
Telephone: (202) 371-2600
Facsimile: (202) 371-2540

*Of Counsel for Defendant
Archer Daniels Midland Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy hereof was sent via the Court's Electronic Case Filing System on this 1st day of April, 2004 to:

Andrew Rothschild
C. David Goerisch
Michael J. Hickey
LEWIS RICE & FINGERSH, L.C.
500 North Broadway, Ste. 2000
St. Louis, MO 63102

Patricia A. Carson
Thomas F. Fleming
KAYE SCHOLER LLP
425 Park Avenue
New York, NY 10022

/s/ Kirill Y. Abramov